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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/687,182	10/16/2003	John J. Brucker	P00736-US1	7587
3017	7590	03/01/2005	EXAMINER	
BARLOW, JOSEPHS & HOLMES, LTD. 101 DYER STREET 5TH FLOOR PROVIDENCE, RI 02903			FERGUSON, MICHAEL P	
			ART UNIT	PAPER NUMBER
			3679	

DATE MAILED: 03/01/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/687,182

Applicant(s)

BRUCKER, JOHN J.

Examiner

Michael P. Ferguson

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-17 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-3 and 6-17 is/are rejected.
- 7) ☒ Claim(s) 4 and 5 is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 16 October 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date ____ | 6) <input type="checkbox"/> Other: ____ |

DETAILED ACTION

Specification

1. Applicant is reminded of the proper language and format for an abstract of the disclosure.

The abstract should be in narrative form and generally limited to a single paragraph on a separate sheet within the range of 50 to 150 words. It is important that the abstract not exceed 150 words in length since the space provided for the abstract on the computer tape used by the printer is limited. The form and legal phraseology often used in patent claims, such as "means" and "said," should be avoided. The abstract should describe the disclosure sufficiently to assist readers in deciding whether there is a need for consulting the full patent text for details.

The language should be clear and concise and should not repeat information given in the title. It should avoid using phrases which can be implied, such as, "The disclosure concerns," "The disclosure defined by this invention," "The disclosure describes," etc.

Claim Objections

2. Claims 1, 6, 14 and 15 are objected to because of the following informalities:

Claim 1 (line 5) recites "a rail connector, said connectors". It should recite --rail connectors, said connectors--.

Claim 1 (line 13) recites "said at two". It should recite --said at least two--.

Claim 6 (line 2) recites "side wall each". It should recite --side wall of each--.

Claim 6 (line 9) recites "said at two". It should recite --said at least two--.

Claim 14 (line 7) recites "from said rear surface". It should recite --from a rear surface--.

Claim 14 (line 8) recites "of said vertical support". It should recite --of said vertical member--.

Claim 15 (line 4) recites "said vertical support". It should recite --said vertical member--.

For the purpose of examining the application, it is assumed that appropriate correction has been made.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1-3, 6, 7 and 11 are rejected under 35 U.S.C. 102(b) as being anticipated by Webster (US 3,037,593).

As to claim 1, Webster discloses a fence system comprising:

two spaced tubular vertical support members **20**, each of the vertical support members having side walls and two vertically spaced holes **29** in one side wall thereof;

rail connectors **62**, the connectors configured to be received and retained in each of the holes in the support members, each of the connectors including a receiver end that extends outwardly from the side wall of the support members when assembled therewith; and

two horizontal rails **30,36**, each of the rails having a first end and a second end, each of the ends of the rails having openings therein, the openings configured to be frictionally received and retained by the receiver end of the rail connectors, wherein the

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two horizontal rails are supported in parallel spaced relation between the vertical support members (Figures 2, 9 and 10).

As to claim 2, Webster discloses a fence system comprising:

a linear groove **33,34,37** extending between the first and second ends of each of the horizontal rails **30,36**; and

a fence panel **52,53** having a top and bottom edge, the fence panel extending between and supported by the spaced horizontal rails, wherein the top and bottom edges are received and retained in the grooves in the horizontal rails (Figure 2).

As to claim 3, Webster discloses a fence system wherein the fence panel **52,53** is a material selected from the group consisting of: woven polymer fabric, interwoven polymer strapping and knitted polymer fabric (fiberglass, a polymer fabric; column 5 lines 15-31).

As to claim 6, Webster discloses a fence system comprising:

three vertically spaced holes **29** in one side wall of each of the vertical supports **20**; and

three horizontal rails **30,36**, each of the rails having a first end and a second end, each of the ends of the rails having openings therein, the openings configured to be frictionally received and retained by the receiver end of the rail connectors, wherein the at three horizontal rails are supported in parallel spaced relation, one of the rails in a top position, one of the rails in a middle position and one of the rails in a bottom position between the two vertical support members (Figures 2, 9 and 10).

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As to claim 7, Webster discloses a fence system comprising a linear groove **33,34** extending between the first and second ends of each of the top and bottom horizontal rails **30**;

two linear grooves **37** between the first and second ends of the middle rail **36**;

a first fence panel **52** having a top and bottom edge, the first fence panel extending between and supported by the top and middle spaced horizontal rails, wherein the top and bottom edges are received and retained in the grooves in the top and middle horizontal rails; and

a second fence panel **53** having a top and bottom edge, the second fence panel extending between and supported by the middle and bottom spaced horizontal rails, wherein the top and bottom edges are received and retained in the grooves in the middle and bottom horizontal rails (Figure 2).

As to claim 11, Webster discloses a fence system wherein the vertical supports **20**, the rail connectors **62** and the horizontal rails **30,36** are metallic (column 5 lines 15-31).

5. Claims 1, 6, 8-11 and 14-16 are rejected under 35 U.S.C. 102(b) as being anticipated by Young et al. (US 4,794,744).

As to claim 1, Young et al. disclose a fence system comprising:

two spaced tubular vertical support members **10**, each of the vertical support members having side walls and two vertically spaced holes **36** in one side wall thereof;

rail connectors **50**, the connectors configured to be received and retained in each of the holes in the support members, each of the connectors including a receiver end

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that extends outwardly from the side wall of the support members when assembled therewith; and

two horizontal rails **16,18**, each of the rails having a first end and a second end, each of the ends of the rails having openings therein, the openings configured to be frictionally received and retained by the receiver end of the rail connectors, wherein the two horizontal rails are supported in parallel spaced relation between the vertical support members (Figures 1, 3-5, 8 and 10).

As to claim 6, Young et al. disclose a fence system comprising:

three vertically spaced holes **36** in one side wall of each of the vertical supports **10**; and

three horizontal rails **16,18**, each of the rails having a first end and a second end, each of the ends of the rails having openings therein, the openings configured to be frictionally received and retained by the receiver end of the rail connectors **50**, wherein the at three horizontal rails are supported in parallel spaced relation, one of the rails in a top position, one of the rails in a middle position and one of the rails in a bottom position between the two vertical support members **10** (Figure 2).

As to claim 8, Young et al. disclose a fence system wherein the holes **36** in the side wall of the vertical supports **10** are rectangular shaped (Figure 10).

As to claim 9, Young et al. disclose a fence system, the rail connector **50** comprising:

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a receiver portion **54**, the receiver portion having shoulders **58** that contact an outer surface of the side wall of the vertical supports **10** when the connector is in assembled relation therewith;

a retention clip **60** extending from a rear surface of the receiver portion, the retention clip configured to extend into the hole **36** in the sidewall of the vertical support and engage the sidewall to retain the rail connector in the assembled relation; and

a guide pin **62** extending from a rear surface of the receiver portion, the guide pin contacting a side of the hole, the guide pin configured and arranged to prevent the rail connector from rotating relative to the vertical support (Figures 4, 5 and 8).

As to claim 10. The fence system of claim 9, the rail connector **50** comprising:

a locking detent **56** extending from a side of the receiver portion **54**, the detent configured and arranged to engage a retention hole **44** in the side of the horizontal rail **16,18** when the end of the rail is in assembled relation with the rail connector (Figures 5 and 8).

As to claim 11, Young et al. disclose a fence system wherein the vertical supports **10**, the rail connectors **50** and the horizontal rails **16,18** are metallic (metal cross-hatching).

As to claim 14, Young et al. disclose a connector **50** for attaching vertical and horizontal members of a fencing system, the connector comprising:

a receiver portion **54**, the receiver portion configured and arranged to frictionally retain a horizontal fence support rail **16,18**, the receiver portion including shoulders **58**

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that contact an outer surface of a vertical member **10** when in assembled relation therewith; and

a retention clip **60** extending from a rear surface of the receiver portion, the retention clip configured to extend into a hole **36** in a sidewall of the vertical member and engage the sidewall to retain the connector in the assembled relation (Figures 4, 5 and 8).

As to claim 15, Young et al. disclose a connector **50** comprising:

a guide pin **62** extending from the rear surface of the receiver portion **54**, the guide pin contacting one side of the hole **36**, the guide pin configured and arranged to prevent the rail connector from rotating relative to the vertical member **10** (Figures 5 and 8).

As to claim 16, Young et al. disclose a connector **50** wherein the connector is metallic (metal cross-hatching).

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which the subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claim 12 is rejected under 35 U.S.C. 103(a) as being unpatentable over Webster in view of Edgman (US 5,702,090).

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As to claim 12, Webster fails to disclose a fence system wherein the vertical supports and the horizontal rails are formed from a material selected from the group consisting of extruded vinyl and PVC.

Edgman teaches a fence system wherein vertical supports **16** and the horizontal rails **22,24,62** are formed from extruded vinyl or PVC; the extruded vinyl or PVC providing for a lightweight, weather resistant, durable fence system (Figure 2, column 2 lines 52-60). Accordingly, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify a fence system as disclosed by Webster to have vertical supports and horizontal rails formed from extruded vinyl or PVC as taught by Edgman in order to provide for a lightweight, weather resistant, durable fence system.

8. Claims 12, 13 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Young et al. in view of Edgman.

As to claim 12, Young et al. fail to disclose a fence system wherein the vertical supports and the horizontal rails are formed from a material selected from the group consisting of extruded vinyl and PVC.

Edgman teaches a fence system wherein vertical supports **16** and the horizontal rails **22,24,62** are formed from extruded vinyl or PVC; the extruded vinyl or PVC providing for a lightweight, weather resistant, durable fence system (Figure 2, column 2 lines 52-60). Accordingly, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify a fence system as disclosed by Young et al. to have vertical supports and horizontal rails formed from extruded vinyl or PVC as

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taught by Edgman in order to provide for a lightweight, weather resistant, durable fence system.

As to claim 13, Young et al. fail to disclose a fence system wherein the rail connector is formed from a polymer material selected from the group consisting of ABS, PVC, HDPE and polycarbonate.

Edgman teaches a fence system wherein the rail connector **40,52,54,66** is formed from a polymer material consisting of PVC; the PVC providing for a lightweight, weather resistant, durable fence system (Figure 2, column 2 lines 52-60). Accordingly, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify a fence system as disclosed by Young et al. to have rail connectors formed from PVC as taught by Edgman in order to provide for a lightweight, weather resistant, durable fence system.

As to claim 17, Young et al. fail to disclose a connector wherein the connector is formed from a polymer material selected from the group consisting of ABS, PVC, HDPE and polycarbonate.

Edgman teaches a connector **40,52,54,66** formed from a polymer material consisting of PVC; the PVC providing for a lightweight, weather resistant, durable connector (Figure 2, column 2 lines 52-60). Accordingly, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify a connector as disclosed by Young et al. to be formed from PVC as taught by Edgman in order to provide for a lightweight, weather resistant, durable connector.

Allowable Subject Matter

9. Claims 4 and 5 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

10. The following is a statement of reasons for the indication of allowable subject matter:

As to claim 4, Webster discloses the claimed fence system with the exception of wherein the top and bottom edges of the fence panel include pockets extending along the length thereof, wherein a retention member is inserted into the pockets to prevent the edge of the panel from being removed from the grooves in the horizontal rails.

As to claim 5, Webster discloses the claimed fence system with the exception of wherein the top and bottom edges of the fence panel include a plurality of spaced tabs extending outwardly therefrom into the grooves in the horizontal rails, the tabs including pockets, wherein a tubular member is inserted into the pockets to prevent the tabs from being removed from the grooves in the horizontal rails.

It would not have been obvious to one having ordinary skill in the art at the time the invention was made to modify fence system as disclosed by Webster to have the above mentioned elements as the prior art neither teaches nor suggests such modifications.

Conclusion

The prior art made of record and not relied upon is considered pertinent to the applicant's disclosure. The following patents show the state of the art with respect to fences:

Zanavich et al. (US 4,540,160) and Bebendorf (US 6,779,781) are cited for pertaining to fences comprising vertical support members, horizontal rails and rail connectors.

Shea (US 5,758,868) is cited for pertaining to fence panels including pockets and a retention member.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael P. Ferguson whose telephone number is (703)308-8591. The examiner can normally be reached on M-F (7:30-4:30).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Daniel P. Stodola can be reached on (703)308-2686. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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DANIEL P. STODOLA
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3600